

**CIVIL SERVICE COMMISSION MINUTES**

**JULY 21, 2004**

A meeting of the Civil Service Commission was held at 2:30 p.m., in Room 358 at the County Administration Building, 1600 Pacific Highway, San Diego, California.

Present were:

Marc Sandstrom  
A.Y. Casillas  
Gordon Austin  
Barry I. Newman  
Francesca Krauel

Comprising a quorum of the Commission

Support Staff Present:

Larry Cook, Executive Officer  
Ralph Shadwell, Senior Deputy County Counsel  
Selinda Hurtado-Miller, Reporting

**Approved  
Civil Service Commission**

**August 18, 2004**

**COUNTY OF SAN DIEGO  
CIVIL SERVICE COMMISSION MINUTES  
JULY 21, 2004**

1:30 p.m.            CLOSED SESSION: Discussion of Personnel Matters and Pending Litigation

2:30 p.m.            OPEN SESSION: Room 358, 1600 Pacific Highway, San Diego, California 92101

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<u>Discussion Items</u>	<u>Continued</u>	<u>Referred</u>	<u>Withdrawn</u>
7,11,12,14,15,19,21	12,13	8,9,10	5,6

COMMENTS: Motion by Casillas to approve all items not held for discussion; seconded by Krauel. Carried.

**CLOSED SESSION AGENDA  
County Administration Center, Room 458  
(Notice pursuant to Government Code Sec. 54954.2)  
Members of the public may be present at this  
location to hear the announcement of the  
closed session agenda.**

A. Commissioner Casillas: Robert B. Coffin, Esq., on behalf of **Rafael Lopez**, Administrative Analyst II, appealing a Final Order of Demotion and Charges (from Administrative Analyst III) from the Health and Human Services Agency.

B. PUBLIC EMPLOYEE APPOINTMENT  
Title: Executive Officer

**OPEN SESSION AGENDA  
County Administration Center, Room 358**

NOTE: Five total minutes will be allocated for input on Agenda items unless additional time is requested at the outset and approved by the Commission President.

**MINUTES**

1. Approval of the Minutes of the regular meeting of June 16, 2004.

**Approved.**

## CONFIRMATION OF ASSIGNMENTS

2. Commissioner Newman: Donna Clark-Richardson, SEIU Local 2028, on behalf of **Wynnelee Patrick**, Detention Information Assistant, appealing an Order of Pay Step Reduction and Charges from the Sheriff's Department.

**Confirmed.**

3. Commissioner Casillas: Donna Clark-Richardson, SEIU Local 2028, on behalf of **Daniel McManama**, Road Crew Supervisor, appealing an Order of Suspension and Charges from the Department of Public Works.

**Confirmed.**

4. Commissioner Austin: Brian Polejes, SEIU Local 535, on behalf of **Bridgette Hunter**, former Protective Services Worker II, appealing an Order of Removal from the Health and Human Services Agency (HHSa).

RECOMMENDATION: Grant Request.

**Staff recommendation approved. Commissioner Austin confirmed.**

## WITHDRAWALS

5. Commissioner Austin: Richard H. Castle, Esq., on behalf of **Peter Dodge**, Deputy District Attorney III, appealing an Amended Final Order of Suspension and Charges from the Office of the District Attorney.

**Withdrawn.**

6. **Gustavo Godoy**, Project Manager, Department of Parks and Recreation, appealing his non-selection for the classification of Senior Park Project Manager by the Department of Parks and Recreation. (See Item Nos. 10, 11 & 14)

**Withdrawn.**

## DISCIPLINES

### Findings

7. Commissioner Casillas: Robert B. Coffin, Esq., on behalf of **Rafael Lopez**, Administrative Analyst II, appealing a Final Order of Demotion and Charges (from Administrative Analyst III) from the HHSa.

## FINDINGS AND RECOMMENDATIONS:

Employee was charged with Cause I - Incompetency (provided inaccurate information on Monthly Reports to Agency and County Executives); Cause II - Insubordination (failure to follow directions); Cause III - Negligence; Cause IV - Conduct unbecoming an officer or employee of the County.

Appellant was demoted from the position of Administrative Analyst III to the position of Administrative Analyst II due to his alleged mismanagement of the Contracts Management Unit in the Alcohol and Drug Services Division of the Health and Human Services Agency. The Agency relied on certain alleged errors and poor results from the Contracts Management Unit and held Appellant responsible as the unit's manager. However, the Agency failed to present evidence showing that Appellant was culpable. Moreover, Appellant presented evidence establishing other causes for the alleged errors and poor performance.

The Agency failed to prove all of its charges by a preponderance of the evidence except Cause I(f). Additionally, Cause II(c) and Cause II(d) were withdrawn by the Agency at the beginning of the hearing. Employee is not guilty of Cause I, Cause II, Cause III and Cause IV. It is therefore recommended that the Final Order of Demotion and Charges be reversed; that Employee will be awarded back pay, benefits and interest from the date of demotion until the date of the Commission's decision; that the Commission read and file this report; and that the proposed decision shall become effective upon the date of approval by the Civil Service Commission.

**Motion by Casillas to approve Findings and Recommendations; seconded by Krauel. Carried.**

<b>AYES:</b>	<b>SANDSTROM, CASILLAS, AUSTIN, KRAUEL</b>
<b>NOES:</b>	<b>NONE</b>
<b>ABSTENTIONS:</b>	<b>NEWMAN</b>
<b>ABSENT:</b>	<b>NONE</b>

## DISCRIMINATION

### Complaints

8. **Gerald Ford**, former Intermediate Clerk, HHSA, alleging harassment and discrimination based on sex, sexual identity and disability by the HHSA.

RECOMMENDATION: Assign an Investigating Officer and concurrently appoint the Office of Internal Affairs to conduct an investigation and report back.

**Staff recommendation approved. Commissioner Krauel assigned.**

9. **Faten Westenfeldt**, Child Support Officer, Department of Child Support Services (DCSS), alleging religion and national origin discrimination by the DCSS. (See Item No. 16)

RECOMMENDATION: Assign an Investigating Officer and concurrently appoint the Office of Internal Affairs to conduct an investigation and report back.

**Staff recommendation approved. Commissioner Sandstrom assigned.**

10. **Gustavo Godoy**, Project Manager, Department of Parks and Recreation, alleging racial discrimination by the Department of Parks and Recreation. (See Item Nos. 6, 11 & 14)

RECOMMENDATION: Assign an Investigating Officer and concurrently appoint the Office of Internal Affairs to conduct an investigation and report back.

**Staff recommendation approved. Commissioner Krauel assigned.**

### **Findings**

11. Commissioner Krauel: **Gustavo Godoy**, Project Manager, Department of Parks and Recreation, alleging racial discrimination by the Department of Parks and Recreation. (See Item Nos. 6, 10 & 14)

### **FINDINGS AND RECOMMENDATIONS:**

At the regular meeting of the Civil Service Commission on June 16, 2004, the Commission appointed Francesca Krauel to investigate the complaint submitted by Complainant. The complaint was referred to the Office of Internal Affairs for investigation and report back. The report of OIA was received and reviewed by the Investigating Officer, who concurred with the findings that there was no evidence to support Employee's allegations of racial discrimination and that probable cause that a violation of discrimination laws occurred was not established in this matter. It is therefore recommended that this complaint be denied; that the Commission approve and file this report with the appended OIA Final Investigative Report with a findings of no probable cause to believe that Complainant has been unlawfully discriminated against; and

that the proposed decision shall become effective upon the date of approval by the Civil Service Commission.

**Motion by Krauel to approve Findings and Recommendations; seconded by Newman. Carried.**

12. Commissioner Krauel: **Regina Mitchell**, Residential Care Worker I, HHSA, alleging race discrimination by the HHSA. (See Item No. 13)

**FINDINGS AND RECOMMENDATIONS:**

Larry Cook, Executive Officer, explained that Ms. Mitchell could not be present at this meeting. She has requested that this item be continued. Commissioner Krauel also requested a continuance of this item.

Mr. Cook recommended that Item No. 12 and Item No. 13 (below) be continued until the next Civil Service Commission meeting.

**Motion by Krauel to continue Agenda Item Nos. 12 and 13 until the next Civil Service Commission meeting; seconded by Casillas. Carried.**

**Continued.**

**SELECTION PROCESS**

**Complaints**

13. **Regina Mitchell**, Residential Care Worker I, HHSA, appealing her non-selection for the classification of Residential Care Worker II by the HHSA. (Held in abeyance pending the completion of the above discrimination investigation. See Item No. 12)

RECOMMENDATION: Take action pending the outcome of Ms. Mitchell's discrimination investigation.

**Continued. (See Item No. 12 above.)**

14. **Gustavo Godoy**, Project Manager, Department of Parks and Recreation, appealing the denial of his placement in "Bracket III" of the Project Manager classification by the Department of Parks and Recreation. (See Item Nos. 6, 10 & 11)

RECOMMENDATION: Hold in abeyance pending the outcome of the discrimination investigation.

**Staff recommendation approved.**

15. **Deborah Allen**, Applicant, appealing her non-selection for the classification of Public Health Nurse IV by the HHSA.

RECOMMENDATION: Deny Request.

Deborah Allen addressed the Commission regarding her non-selection by HHSA. She had been told by the Agency that she was the most qualified person for the position, however, during the preliminary background check, she became aware of negative remarks contained in her personnel file. Having always received standard and above performance evaluations, she feels that a hearing is warranted.

**Motion by Austin to conduct a Rule X hearing; seconded by Casillas. Carried.**

#### **OTHER MATTERS**

##### **Seal Performance Appraisal**

16. **Faten Westenfeldt**, Child Support Officer, DCSS, requesting an investigation of alleged violations of Civil Service Rule V by the DCSS and requesting the sealing of a Performance Appraisal for the period August 26, 2003 to November 14, 2003.

RECOMMENDATION: Hold in abeyance pending the outcome of the discrimination investigation. (See Item No. 9)

**Staff recommendation approved.**

##### **Extension of Temporary Appointments**

17. Department of Planning and Land Use

A. 2 Land Use Technicians I (Juan Josse, Dagmara Harrison)

B. 2 Building Inspectors I (Glen Fischer, Marc Morcos)

18. Office of County Counsel

1 Deputy County Counsel (Christa Baxter)

RECOMMENDATION: Ratify Item Nos. 17 & 18.

**Item Nos. 17 and 18 ratified.**

19. Discussion and Possible Action Relating to Unprofessional Comment of Commissioner at Meeting.

President Sandstrom:

"The last item on the Agenda is No. 19 'Discussion and Possible Action Relating to Unprofessional Comment of Commissioner at Meeting'.

"I would like to put that item in context before we have any testimony.

"I was approached, as President, by a staff member who was equally concerned by the remark which was heard on the tape as the Minutes were prepared for that meeting. It was seen as a two-year effort to remove their supervisor. It was an accumulation of efforts that were done within the Commission and extra curricularly. The employee was very concerned that they could not just ignore the comment, but yet there was a fear of retaliation. I approached the Commissioner in question and indicated that the remarks made on the tape were not professional and the Commissioner indicated that it was up to the Commission and not up to me as the President. For that reason I sent you, and only you, a memo, asking whether the issue should go on the Agenda for consideration. I have not discussed the merits of this conduct with any Commissioner, except the one Commissioner who was responsible for the remark.

"And with that, I would like to have any testimony."

Prior to discussion and possible action, Commissioner Newman invoked his rights under Robert's Rules of Order and read the following into the record:

Commissioner Newman:

"But before I do, let me tell you that however this matter is dealt with today, and whoever is criticized, the true victim will be the Commission itself. Since everything I am now going to tell you has been already told to our current President, before his seeking to docket this item, I have to believe that he, and any who voted to support his docketing of this item, are unconcerned about the substantial harm being done to the Institution.

"With that said, in order to fully understand this Agenda item, Commissioners, it is necessary to refresh your recollection as to two separate, but absolutely related, events.

"On 11 February of this year, the Executive Officer of this Commission, in a formal meeting with the Press publicly supported a resigning Commissioner's charge that her



resignation was forced; a) because the County wanted an 'employer friendly body instead of a neutral body' and, b) because (and I quote directly from the article) 'a Commissioner they would not name (had) been trying to force Cook to retire'. Since every vote on the subject, up until that time, had been a 4-1 vote, they clearly were referring to me. In short, their claim was that our appointing authority (the Board of Supervisors) had not only been dishonest in its explanation but that I was the Board's tool in its attack against Larry Cook. Mr. Cook (and I once again quote) supported 'everything she said'. Whether that support included an earlier statement in which the resigning Commissioner stated that her appointing Supervisor was "being fed the Commissioner's voting information and she was either extremely gullible or stupid" is left unclear in the article.

"When I spoke with our current President relating my deep concern about the public statement made by Mr. Cook and his clear reference to me personally, Mr. Sandstrom's only response was 'I'm sure Larry wishes he hadn't said that'. Notice - No need for Commission action or even for Commission mention. I accepted that passivity out of regard for the Institution.

"The next part of this critical background begins less than 3 months later.

"This Commission appointed me and one other Commissioner as a Subcommittee to develop a budget recommendation to address budget cuts being demanded as part of the County's Budget Process. The two of us met with Mr. Cook with the objective of developing a recommendation to this Commission which would maintain the existing personnel status quo and yet respond to the demanded overall budget cuts. We, after review of the budget lines and reliance upon the expertise of Mr. Cook, structured a proposal. Based upon the preliminary framing of the proposal, I unofficially and preliminarily checked both with County Finance and with our outside consultant (who would be materially affected by our budget reduction proposal) and obtained their respective concurrences.

"Throughout this short process, there was extensive dialogue with Mr. Cook as to whether we were missing anything; and stressing the need to identify what I refer to as snakes in the woodpile. The only issues mentioned in response to my inquiries related to a desire on his part to keep certain items in the budget which he could later return unused to the Finance Group so the Commission could be commended and receive recognition. Clearly this was nothing but optics, and not at all defensible or justifiable.

"Five days later, on 24 May, the Commission had a Special Meeting, at which, inter alia, the Subcommittee's budget proposal was to be presented to the full Commission. We all met first in the Commission offices for a closed session and then as a group, walked up to the Tower Meeting Room. Mr. Cook was within a few feet of me while we were walking to the Meeting with both an unfettered opportunity and complete freedom to talk to me.

"At the Meeting, I gave my report, presenting the Subcommittee's proposal. Suddenly and with absolutely no advance notice or warning; I found myself listening to Mr. Cook explaining (and remember that this was not only a public meeting but a well attended public meeting) why the proposal could not work, using information which had never been shared with the Subcommittee or with me.

"I reacted instantly, emotionally and humanly, but only once and very quietly. Remember that it was only later while transcribing the proceedings, that the words complained of in this docket item were heard. My mike was on. But you must acknowledge that the most emotional words and those most frequently repeated were that I had been blindsided.

"But once again, I urge you to notice that insofar as Mr. Cook's actions were concerned - No need for Commission action or even mention.

"One has to be blind to avoid the extraordinary difference. For my emotional and human reaction to a senior staffer charged with serving the Commission, blindsiding a Commissioner by publicly challenging the very data he had provided to the Commissioner - that - in the view of our current President, not only warrants, but demands, Commission action.

"Commissioners; the only analogy I can think of is a baby sitter, who, while on duty, plunges the child's hands into a pot of boiling water, and after the child's scream of pain, the family sits down, with the Baby Sitter, to condemn and sanction the child for its scream.

"To recap then: A very public statement to the press accusing our Appointing Authority of dishonesty; challenging the very integrity and impartiality of this Body; and pointing an accusatory finger at individual Commissioners-Neither actionable nor mentionable.

"A senior staffer publicly disputing data he provided to the Commission with no forwarding or notice - Neither actionable nor mentionable.

"But a single human, emotional and instantaneous response by the affected Commissioner to such a blindside. That is fully actionable - astonishingly even to the extent of engaging a forensic reporter to transcribe the proceedings (when there had never been a denial of the words used).

"What a disquieting lack of relative proportionality. What a disturbing absence of balance from such a quasi-judicial body.

"In conclusion, let me say that this appalling failure of balance and proportionality will allow me to hear whatever you ultimately conclude in this matter with equanimity because I can look from whence it came.

"With that, as is my right under Robert's Rules, I ask for this statement to be made a part of the official records of this meeting; and I ask unanimous consent for a two minute recess so I can depart this chamber and leave you to your weighty deliberations."

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Mr. Newman departed the meeting at the conclusion of his prepared statement.

Subsequent to Commissioner Newman's departure from the meeting, members of the Commission, members of SEIU Local 2028 and SEIU Local 535, as well as Everett Bobbitt, Esq. discussed their concern about Mr. Newman's unprofessional behavior/conduct at the Commission's May 24, 2004 Special meeting, as well as taking possible action. Primary concerns of SEIU representatives related to Commissioner Newman's role as a Commissioner and Hearing Officer in which he adjudicates similar alleged transgressions of employees. Commissioners also expressed concerns regarding this issue.

President Sandstrom:

"I think what is missed initially by Mr. Newman, Commissioner Newman, is not the fact that it was made to a microphone inadvertently which is forgivable, but the fact that that information, or that comment has to be transcribed and it does impact the people that listen to it and very adversely. And it isn't an isolated action out of context, it has to be looked at in the context of what Mr. Newman over the past two years has done, or tried to do, to that person's supervisor. It does create to me a very hostile atmosphere and cannot be ignored by the Commission. At this point I'm not willing to say which way I think we should go. But it cannot be ignored. The comment, even though made to a mike is unprofessional. I don't think there's any doubt that it's unprofessional. It belies some of the actions Commissioner Newman has made in the past that he had the highest regard and respect for Mr. Cook,

and his actions were merely to try and bring on some new blood and remove someone who is acting in a retirement capacity. So I ask 'the overseers' of this Commission - I don't think the Commission's reputation is tarnished by discussing this matter; Commissioner Newman tarnished the Commission by making the remark even though it was initially intended to be private, he ultimately should be aware that it isn't private, and that the comment itself is offensive. So with that, does anyone else - do you have any comments, Mr. Cook? You were the subject of it, and by the way - Mr. Cook was not the one who brought the matter to my attention."

Larry Cook, Executive Officer:

"Yes, Mr. President and Commissioners - I have a lot to say, but because of what has already been presented so well, I'm just going to give you limited comments. And those limited comments are that unfortunately Mr. Newman has created a hostile work environment. His demeanor today exemplifies what we've been dealing with for the last two years. You can imagine when an individual acts that way, walks out of a meeting for example, or turns his back to you, or shouts at you, or calls you a name, hangs up on you with the telephone. You can imagine what your reaction is as a supervisor in an office and your employees are observing those kinds of things. You can imagine what your feelings are. It's extremely difficult to deal with. It is definitely a hostile working environment and you are the overseers of the personnel system in this County. And I agree with the speakers that you have a duty to deal with this. You don't have the authority to remove Mr. Newman, but you do have the authority to silence him, with limited circumstances, that Mr. Shadwell may want to expand on. And you do have the right to send the recommendation to the Board of Supervisors, specifically Supervisor Horn, with specific recommendation of removal or a recommendation of your choice, such as taking action whatever he and you would deem necessary. But to turn your backs, and I know you won't, on such an important matter, in my opinion is to turn your back on the system that you are responsible for. We as staff are greatly offended. It is a hostile working environment. You need to deal with it. I'm not going to go into any detail responding to what Mr. Newman said today, other than to say some of the things he said, some of the more important things he said, were untrue. Some of the things were embellished. But unless your Commission wishes, because I don't want to drag this any further than needs to, I'm not going to go beyond that. Thank you, sir."

President Sandstrom:

"I might add that when I talked with Commissioner Newman I offered him the opportunity and said that I think it would be appropriate for him to apologize to the Commission and to the individuals involved. He told me, essentially, to stuff it. You see by his actions today, I don't understand having to leave the meeting - Commissioner Krauel you are the expert on the Brown Act - this evening we are in public and he has every right to be present and should be present."

Commissioner Krauel:

"I agree."

President Sandstrom:

"It's not some Kangaroo Court going on here. We are trying to discuss the matter, and essentially I allowed him to speak first so he could clear the air if he wanted to. He chooses to go off on an attack rather than to even consider apologizing for the remark he made."

Commissioner Austin:

"I'd like to say a few words. I'm the senior member on this Commission, having served now with a number of different Commissioners over almost 9 years. And I've always been very proud of the quality of the Commission that we have had. We have had a very professional relationship among ourselves and I think we have demonstrated to the public and to the County employees that we have been fair in our judgments and in almost every case that I am aware of. This, obviously, this incident, that has been, in my opinion, blown up perhaps out of proportion, is the tip of the iceberg. It is not the issue in of itself. It's simply the thing that brought it to the point where it had to become a public issue rather than kept in house as a private issue. I was sitting at the meeting on the other side of Commissioner Newman when he reached over and made the remark, and certainly he did not intend it for the public and did not realize that the mike was picking it up. It's one of those things that I think is unfortunate. It's not professional, but as Mr. Bobbitt alluded to earlier, we are all prone sometimes to say things that we shouldn't be saying and they come back to haunt us. But I think that the real tragedy in this is the breakdown that it has caused with a perfectly working unit, with a staff that has worked very well with every element of the County, that has gotten nothing but praise with every survey that has been done, asking about the Civil Service Commission and what the public and employees perceive of its services. Staff always gets lauded for its

professionalism, its helpfulness and those things don't come about by accident. They come about because you have at the helm someone who builds a team that works together and that team includes us on the Commission that come on at various times, have to be trained, have to be guided as to what's appropriate, what's not; what's legal, what's not. It takes a very special kind of individual, I think, to do that so successfully as Larry Cook has done for many, many years. I don't know what originally prompted Commissioner Newman to take up, as what has to be termed a crusade, to get rid of him. But that's basically what it has been for at least two years now. He's been successful. The Commission, at its last meeting, voted to replace him with a full time executive director, and we are now in the process of searching for such an individual. I think that's a tragedy for the County, it's certainly not a good thing for the taxpayers, it's going to cost the County taxpayers a lot more money, and unnecessarily, but that's another argument. I don't know that we really have a definitive role in this. Perhaps Mr. Shadwell can advise us what our legal options are. I know we obviously can't replace him if we were of a mind to do so. I'm not sure it's appropriate for us to tell the Board of Supervisors what it should do in that regard since we are the appointees of the Board members, and I too regret that I think it could have been handled a lot more easily if Barry, Mr. Newman, had just realized he had made a mistake, and apologized for it. But I don't know at this point - I don't want to add fuel to the fire. I think the damage has been done, the damage has been being done the last two years on this Commission. You, of course, were not aware of for the most part, but now our dirty laundry is out in the open for everybody to know. It's not a harmonious working situation anymore. We don't come to the meetings with the camaraderie that we have enjoyed in many years in the past. Mr. Shadwell, perhaps I should ask you - several comments have been made that we should take some action. What are the actions that are appropriate for the Commission to consider?"

Commissioner Krauel:

"I would like to speak before any recommendations. I think it is very important for both the Commissioners and the staff to treat one another with respect. And except for that one comment, I have seen nothing but that. Now, granted I'm new. But I have seen . . . I have read about and heard about things that happened before I got here. But I have in my own experience not witnessed anything like that from either Commissioner Newman, any other Commissioner, or the staff. I don't want to minimize the issue of the treatment of staff and I don't disagree that this matter should be dealt with. It was a private comment. Mr. Newman was unaware the mike was on

and the comment was not directed to Mr. Cook. It was not made public until the Minutes were being prepared and then followed an extraordinary series of events, of which I am completely unaware, which led to the publication of the comment. I'm not sure what is to be gained today, except the embarrassment of Mr. Cook, damage to the Commission, which I am very concerned about. I, like Commissioner Austin, am not even sure the Commission has a role here today. I would have preferred that this matter be handled privately, and I believe there were options to do so. So I will not support any motion of censure, any action that takes this matter farther. I am very disappointed that this action has come to the public. I would have preferred that it not."

Commissioner Sandstrom:

"Mr. Shadwell, at my request, provided us an opinion, which gave us, essentially, the options. The Commission, under Robert's Rules of Order and its own guidelines, has the right to censure Commissioner Newman if it wishes, and beyond that, probably nothing. We can also refer, and I would recommend we at least consider that - refer the transcript of this portion of the meeting along with the transcript of the comments to the County Board for whatever action they deem appropriate. I don't think it is appropriate for us necessarily to make a recommendation, but I think they should be aware of what one of their appointees has done. And contrary to Commissioner Krauel I tried to find out if there was any way we could do this privately. We could not hold a Closed Session to discuss this. It needed to be discussed, it could not be ignored. Having been involved as a manager over 30 years, when something is called to your attention, the worse thing you can do is ignore it. And I don't think the Commission or myself could ignore the comment that was made, in the context it was made, and in the atmosphere that has been created with this staff. You are new here, Commissioner Krauel, and I have to tell you that Commissioner Newman has a very volatile temper and exercises it frequently. Even at the meeting publicly he got very upset and said I won't deal with this matter anymore. But that's also directed at the staff privately, and so be it. He's a human being and he's different than we are. I don't know why he has this anger, he's blown up at me publicly. That's the way he is, but I don't think it's very professional for him even to make a private comment to you Commissioner Krauel. It would have been much more appropriate if he had gone in privately with Mr. Cook and did what he had to do and talk it out with him. But he had chosen not to do that over the last two years."

Commissioner Krauel:

"I just wanted to confirm I didn't want anybody to think that I didn't think it shouldn't be dealt with. I was hoping that you weren't interpreting my remarks that way. I said it should be dealt with but I was saying it should be done privately. And there were options, I know there are options because I have some, but nobody asked me."

Commissioner Sandstrom:

"Well, unfortunately we have counsel, and I have to rely on counsel. I tried to keep it confidential. You were upset with me marking my own memo 'confidential'. I was only marking it confidential at that point in time, there were only 4 copies made; they went to the Commissioners and nobody else. I have the fifth copy. I now want to make that part of the record so the record is clear that what I sent out to the Commissioners so that the matter could be considered at this juncture. Again, I make no recommendation on that and just outlined some options."

Commissioner Casillas:

"Well, the only thing I can add to this fiasco is that the least that we could get from Mr. Newman is a public apology, to own up to his own mistakes and shortcomings. And this would be the first step. There may be other things that we could do, we could censure him perhaps, we'll hear more about that from our legal advisor. But that's the least, the least that anyone could do when you insult someone. And that's the civility in this whole matter of this Commission, that we should treat ourselves like professionals and not like street mongrels out there. So, I'd like to hear from our legal advisor and see what other options we might have."

Mr. Shadwell:

"I'm not sure I can present you with any other options. I think, really, the range has been mentioned here. I can perhaps summarize for you. Your Civil Services Rules do provide that Robert's Rules of Order shall guide the Commission in its proceedings. Robert's Rules of Order does provide for the discipline of members. It actually provides for a progressive discipline type system which would go as far as, under Robert's Rules of Order, suspending or removing a member, however, your Commission does not have that authority, of course, over the members of the Commission since the appointing authority is the Board of Supervisors. Perhaps the most that you can do is as has been mentioned, ask for an apology, censure the member, which in essence, is a reprimand



aimed at preventing further offending actions, and also has been mentioned, if you desire, you could send a recommendation to the Board of Supervisors, or as the President has suggested, send them materials without a recommendation. Your Commission also does not have to do anything. It's really, at this point, up to you."

Mr. Casillas:

"I just wanted to add one other thing. And that is, we as Commissioners will have to decide what we have to do. But how about members of the staff that may have a problem with that. Do they have some legal avenues that they can pursue that might satisfy that issue?"

Mr. Shadwell:

"I would not want to give advice in that respect. They perhaps should consult an attorney, a private attorney, if they wanted to look at that."

President Sandstrom:

"Let me again state that despite Commissioner Casillas' comment, my concern is not the person who the comment was directed at, but the collateral damage to the staff. The person that it was directed at has been under bombardment for two years and has amazingly kept his calm. I don't know - I couldn't have done what he did and probably would have used language worse than Mr. Newman did, but he has chosen to remain professional. However, the staff is not in a position to respond. They are there with Civil Service jobs at risk, Commissioners that are attacking, or a Commissioner that has been attacking their supervisor. That's the collateral damage that concerns me, and I believe at a minimum we should consider reprimanding Mr. Newman and urging him to become more collegiate and apologize to the staff and to the Commission. It's not the Commission that is causing this problem and bringing it to the public, it's Mr. Newman who brought it to the public by making the comment."

In an effort to move toward a healing in this situation, Commissioner Austin moved that Commissioner Newman be asked to apologize to Mr. Cook as well as the Commission staff.

**Motion by Austin to direct the Commission to seek an apology from Commissioner Newman, both to Mr. Cook as well as Commission staff; seconded by Casillas. Carried.**

**AYES: SANDSTROM, CASILLAS, AUSTIN**  
**NOES: NONE**  
**ABSTENTIONS: KRAUEL**  
**ABSENT: NEWMAN**

Accordingly, President Sandstrom, on behalf of the Commission, will inform Commissioner Newman of the Commission's desire.

20. Public Input.

#### **Off Docket Item**

**Motion by Newman to include Off Docket Item; seconded by Casillas. Carried**

**AYES: SANDSTROM, CASILLAS, NEWMAN, KRAUEL**  
**NOES: AUSTIN**  
**ABSTENTIONS: NONE**  
**ABSENT: NONE**

21. Commissioner Austin: Ron Frease, S.E.I.U. Local 2028, on behalf of Jesse Garcia, former Plumber, appealing an Order of Termination and Charges from the Department of General Services.

Pursuant to Larry Abelin of Labor Relations, an agreement had been reached late the prior evening and executed just before this meeting. Commissioner Austin felt it inappropriate as he had not had a chance to review this agreement, and because the hearing in this matter was scheduled for the following day. Commissioner Austin was given an opportunity to review the settlement agreement prior to this matter being discussed in Open Session.

#### Discussion:

Commissioner Austin stated that he had concerns regarding the settlement agreement proposed by S.E.I.U. on behalf of Mr. Garcia. Normally, he explained, a hearing would ensue and an agreement would be presented to the hearing officer for review, as well as review by the Commission. With this in mind, Commissioner Austin read into the record, the entire Settlement Agreement, signed by Larry Abelin, Labor Relations, and Ron Frease, S.E.I.U. Local 2028.

The Commissioner added that had the Department proved the charges in an evidentiary hearing, the charges would have justified termination.

Motion by Krauel to approve Settlement Agreement;  
seconded by Newman. Carried.

AYES:	SANDSTROM, CASILLAS, NEWMAN, KRAUEL
NOES:	NONE
ABSTENTIONS:	AUSTIN
ABSENT:	NONE

ADJOURNMENT: 4:15 p.m.

NEXT REGULAR MEETING OF THE CIVIL SERVICE COMMISSION: AUGUST 18, 2004